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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	))))))))	CC Docket No. 96-128

REPLY COMMENTS OF THE AMERICAN PUBLIC COMMUNICATIONS COUNCIL

Albert H. Kramer
Robert F. Aldrich
DICKSTEIN SHAPIRO MORIN
& OSHINSKY LLP
2101 L Street, N.W.
Washington, D.C. 20037-1526
(202) 828-2226

Attorneys for the American Public
Communications Council

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Summary

Contrary to the arguments by the IXCs and a number of other parties, the Court of Appeals on two occasions has upheld much of the Commission's payphone compensation system and expressly recognized in Payphone II that "a market-based rate – as opposed to a cost-based rate – could satisfy the statutory fair compensation requirement." The Court's concern was that the Commission had not adequately explained "why a market-based rate for coinless calls could be derived by subtracting *costs* from a *rate* charged for coin calls." The Court faulted the Commission for failing to find expressly that costs and rates converge. The Court also found that the Commission failed to go through "the steps of connecting this premise [that costs and rates converge] with its reasoning in the Second Report."

The Commission correctly sought comment on how to fill the missing links identified in the Court's opinion: (1) "whether the local coin rate reflects competitive market conditions and the extent to which costs and rate converge in the coin call market," and (2) whether, and how, it is possible to reason from the fact that costs and rate converge to the conclusion that the local coin rate, adjusted for differences in the costs directly attributable to local coin calls and dial-around calls, can serve as a "market-based mechanism for deriving fair compensation for coinless [dial-around] calls."

Therefore, the Commission should resist efforts to undo what has already been decided and upheld by the appellate court. At this juncture, the Commission's direction is clear: it must demonstrate through an appropriate analysis, that the local coin rate is a competitive rate that converges with costs, and that, with adjustments for

differences in costs directly attributable to coin calls, the local coin rate provides a market-based rate for dial-around calls. When the Commission makes this showing on remand, there will be no need to rollback the existing market-based compensation system and reinvent the proverbial wheel, as is favored by some parties. Consistent with this approach, the lines of argument urged by the IXCs, the paging industry, and others should be rejected once again because they do not pass muster as a legal matter and are not good public policy options.

The IXCs and others attempt to jettison the Commission's use of the local coin market, as the starting point for a compensation rate for dial-around calls by arguing that the local coin market, which has been deregulated as of October 1997, is hopelessly distorted by the presence of "locational monopolies" in the payphone market. Contrary to the IXCs' arguments, "locational monopolies" do not control the payphone market. To the extent that "locational monopolies" may exist in a few locations, there is little reason to believe that such monopolies could be sustained in the vast majority of cases. In addition, the IXC's views are undoubtedly in jarring contrast to the real world experience of the millions of callers who use payphones today. Customers were never wedded to particular payphone locations, and with the advent of deregulation of the local coin rate, they can and do shop around for the best local coin rate.

The IXCs fail to consider, for example, that a significant number of payphone customers, perhaps a majority, are each repeat customers of the same handful of payphones that each uses. These payphone customers make calls from payphones in their neighborhoods, near their places of work, and along their daily commuting route without any complaint about the market-based rate charged at the payphone. To the extent that the payphone customers encounter or use a payphone that charges more than they believe is inappropriate, these customers will avoid that payphone in the future. The would-be customers of an overpriced payphone will simply use another nearby payphone or defer making the call until they reach their home or place of work. In addition, product substitutes for payphone calls, such as cellular calls, abound. In short, over a relatively short period of time, payphone customers are becoming fully educated about any variations in the coin rates at the payphones they encounter on a routine basis and make their calling plans accordingly.

Because "locational monopolies" cannot be sustained to any significant degree, commissions paid to location providers cannot be considered "monopoly rents." Instead, the commissions paid to location providers are needed to ensure the deployment of payphones in a world where every marketable space is up for grabs. PSPs compete with a wide range of products and services to secure the requisite location space. Bidding for locations by PSPs is bidding to entice a location provider both to free up space <u>and</u> to win that space from other competing uses. If payphones do not earn a particular level of revenue for the location provider, other revenue-generating services, whether it is a cappuccino cart at the airport or a snack foods rack at the convenience store, will take up the space.

Contrary to MCI's assumption that the number of locations for payphones is fixed, the supply of physical locations at which payphones can be placed is elastic – the supply depends only on what the market dictates. To the extent that any payphone at any location charges more than the market will bear, payphones will spring up at adjacent locations and will charge less, as the market makes it worthwhile for location providers to allocate space for payphones. These locations will compete with each other, particularly because payphone locations tend to be more or less fungible. Moreover, the availability of competing sites is also a check on location providers. Even though PSPs are in intense competition for locations, location providers who require high commissions will drive competing PSPs to alternative sites that require lower commissions and, therefore, have lower payphone rates.

A number of parties urge "caller-pays" upon the Commission as a vehicle for ensuring that the end user is entering into a market-based transaction with the PSP when the end user makes a dial-around call. These parties are conceding that market-based compensation tied to the local coin rate is appropriate for dial-around calls. If the two market segments "exactly mirror" each other, as argued by one IXC, this is true whether or not the caller pays for the call by depositing coins or through a surcharge. If caller-pays yields a market result at a location, the fact that the transaction occurs through a "back end" payment does not change the character of the market. There either is or is not a locational monopoly, and changing the transaction to an up-front, cash-in-advance, deal does not affect the underlying economic structure of the market in which the transaction occurs.

In their attempts to show that the payphone market is not competitive, the IXCs argue that the prevailing 35-cent local coin rate, and the fact that this amount represents a 40 percent increase over the previous prevailing rate of 25 cents, are evidence of the lack of price competition between PSPs. With this argument, however, the IXCs have it exactly backwards. Prices tend to be uniform in a competitive market. The prevailing 35-cent rate demonstrates only that the demand curve is flat for the ability to make a call from a payphone. In other words, 35 cents is the market price produced by differentiated competition for the majority of payphone locations. A greater variation in price might imply that local coin calls were not responding to the market in some locations. More importantly, if "locational monopolies" controlled the payphone market, as the IXCs insist, then one could expect local coin rates to be ***much higher*** than the prevailing 35-cent rate in at least a significant number of locations.

The prevalence of a 35-cent local coin rate also suggests that the ***market*** has effectively *capped* the local coin rate at 35 cents. To the extent that coin rates higher than 35 cents exist on any payphone, the PSP charging the higher rate would be under considerable market pressure to bring its rate in line with the 35-cent prevailing rate.

None of the other parties present any economic or cost studies of note, although most of the commenters opposing the Commission's market-based approach seem "certain" that they would pay less under the cost-of-service ratemaking they advocate, as long as they can dictate what is considered a cost. In addition, as in every step in this proceeding, a number of parties ask the Commission to consider anew issues that are either peripheral or beyond the scope of the Commission's charge on remand. None of these issues warrant diverting the Commission's resources from focusing on its relatively narrow, straight-forward inquiry in responding to the Court's concerns in Payphone II.

As any observer of the telecommunications arena is aware, the intensive rate regulation proposed by the IXCs and others goes against the grain of decades of federal telecommunications deregulation. What the Commission has done in this proceeding is to free the payphone market from the outdated, overly-regulatory approach of prescribing a particular rate. The Commission refused to set *any* rate, other than a default rate in the near term, and elected to let the market determine the requisite payphone rate for any given time and place. Such a market-based rate, which fosters competition and unshackles service providers from tedious regulatory ratemaking proceedings, is in step with the deregulatory trend that has swept through the broader telecommunications industry. In their fixation on the best "rate," the IXCs and others should not be allowed to turn back the clock to the stone age of regulation, just as the competitive market is beginning to flourish.

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REPLY COMMENTS OF
THE AMERICAN PUBLIC COMMUNICATIONS COUNCIL

The American Public Communications Council ("APCC") hereby replies to the comments submitted in response to the Commission's Public Notice, DA 98-1198, dated June 19, 1998 ("Public Notice"), seeking further comment on certain issues raised by the decision of the U.S. Court of Appeals for the District of Columbia Circuit in MCI Telecommunications Corporation v. FCC, slip. op. (D.C. Cir., No. 97-1675, May 15, 1998)("Payphone II").

A number of comments filed in response to the Public Notice express a distorted view of the Commission's responsibilities in this proceeding in light of the recent decision in Payphone II. These comments attempt to portray the Court's decision as a wholesale repudiation of the Commission's market-based system for payphone compensation, which requires the Commission to fundamentally rethink its approach. See, e.g., Sprint Corporation ("Sprint") at ii. The Commission should not be taken in by this view.

Although the Court faulted the Commission for not adequately explaining the relationship between payphone coin calls and dial-around calls, the Court expressly recognized that a market-based rate could satisfy the statutory requirement for "fair" compensation. While several parties portray the oral argument before the Court as hostile and selectively quote from the transcript, it was clear by the end of the oral argument and in the tenor of the Court's opinion, which is how Courts ultimately speak, that the Court appreciated the difficulty in formulating a market-based proxy for a regulated service when every other service in the market, including services relying on common equipment and common costs with the regulated service, is not regulated. As the argument progressed, the judges appeared to recognize in the way each framed his or her questions the difficult task the Commission has had in deregulating payphones and compensating payphone owners. This recognition is consistent with the fact that, through two opinions in two years, the Court has upheld *most* of the Commission's deregulatory framework. The Court's concerns have become more focused and the Commission's charge more specific.

In the interexchange carriers' ("IXCs") rush to argue to the Commission that the entire market-based compensation approach should be rolled back, the IXCs and others fail to give the Commission any particular vision or plan of how the statutory goal of "fair" compensation for payphone service providers ("PSPs") is to be achieved. Instead, the IXCs and other commenters advance two arguments in tandem: (1) that they should pay much less (through incremental cost-based compensation) and (2) that somebody else altogether should pay (through the caller-pays approach). Window dressing aside, this two-legged approach appears to be the extent of their position.[1]

The carriers go to great lengths to make their we-should-pay-less views more palatable to the Commission. MCI Telecommunications Corporation ("MCI") includes an academic analysis of the payphone market that has some superficial appeal at first glance, but does not hold up under even minimal scrutiny. As APCC's economists Haring and Rohlfs demonstrate in their reply declaration ("SPR Reply") analyzing MCI's study of the payphone market, which MCI commissioned from the E-Group ("MCI E-Group study"), the analysis in the MCI E-Group study is riddled with errors and false assumptions. The MCI E-Group study contains a significant number of economic arguments and assumptions that are plainly incorrect, as APCC discusses within these comments and in the attachment. In addition, the MCI E-Group repeatedly cites facts that do not support its premises. For these reasons, the Commission should not rely on the MCI E-Group study to any extent.

After finding it difficult to attack payphone competition that is actually working, the IXCs, particularly the MCI E-Group study, have created a new villain: the payphone location provider. The IXCs claim that the location provider has a "monopoly" over the provision of payphone service at each and every location and, as a result, the payphone market cannot function. Using this platform, the IXCs launch a two-pronged

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[1] Two IXCs, AT&T Corp. ("AT&T") and Sprint, attempt to convince the Commission that independent PSPs negotiated a "market-based" rate several years ago, when in reality the PSPs lacked any leverage whatsoever at that time to negotiate a per-call compensation arrangement for all dial-around calls at a fair-market price. See Section IV.E., below.

attack. First, the IXCs claim that it is not possible to equate rates with real economic costs because the commissions paid to location providers do not represent real economic value, but instead are "monopoly rents." Second, the IXCs contend that because the commissions are not legitimate business expenses but rather monopoly rents to the location provider, they are not a cost the Commission should consider. In making this attack, however, the IXCs fail to acknowledge a fundamental reality in the payphone market. The commission payments represent payments for real and economically recognized opportunity costs. Without commissions to location providers, payphone sites would begin to disappear and be replaced by other revenue generators, such as soft-drink vending machines or bagel carts. Taking commissions paid to location providers out of the equation is akin to telling a PSP that the cost of payphone placards with rate and service information is not essential to providing payphone service.

MCI also submits a study that purports to examine a PSP's overall costs of doing business ("MCI cost study"). It is worth noting at the outset that the Commission has already set forth the reasons why a cost-based approach to dial-around compensation is infeasible and inappropriate.[2] In addition, any cost study is inherently uncertain and susceptible to becoming obsolete in short order. As APCC pointed out in its initial

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[2] Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order, FCC 96-388 (rel. September 20, 1996) ("Payphone Order"); Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Order on Reconsideration, FCC 96-439 (rel. November 8, 1996) ("Order on Reconsideration"); Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Second Report and Order, FCC 97-371 (rel. October 9, 1997). ("Second Report and Order").

comments, cost-of-service ratemaking is not desirable or feasible for dial-around compensation. Most of the costs of payphone service are fixed costs. The per-call cost for those costs is highly sensitive to the number of calls made from a payphone. The compensation set by the Commission will itself have a major effect on the supply of payphones, and therefore on the number of calls per-payphone and the per-call cost. The supply of payphones will attempt to adjust to equalize costs at the rate set by the Commission. But each change in the supply of payphones changes the volume of calling at payphones, and hence the cost per call, setting off another cycle. Thus, a cost-based compensation amount is inherently unstable. These problems are not present in a market-based compensation system, however, because a market-based rate is self correcting.

As to the MCI cost study in particular, entire categories of costs are omitted and a handful of questionable assumptions run throughout the analysis. In addition, the MCI cost study has the same "manufactured-to-understate-costs" quality that the other IXC-advocated cost studies have. Therefore, the Commission should not waste any time on the MCI "cost" study before consigning it to the dustbin.

None of the other parties present any economic or cost studies of note, although most of the commenters opposing the Commission's market-based approach seem "certain" that they would pay less under the cost-of-service ratemaking they advocate, as long as they can dictate what is considered a cost. In addition, as in every step in this proceeding, a number of parties ask the Commission to consider anew issues that are either peripheral or beyond the scope of the Commission's charge on remand. None of these issues warrant diverting the Commission's resources from focusing on its relatively narrow, straight-forward inquiry in responding to the Court's concerns in Payphone II.

As any observer of the telecommunications arena is aware, the intensive rate regulation proposed by the IXCs and others goes against the grain of decades of federal telecommunications deregulation. What the Commission has done in this proceeding is to free the payphone market from the outdated, overly-regulatory approach of prescribing a particular rate. The Commission refused to set any rate, other than a default rate in the near term, and elected to let the market determine the requisite payphone rate for any given time and place. Such a market-based rate, which fosters competition and unshackles service providers from tedious regulatory ratemaking proceedings, is in step with the deregulatory trend that has swept through the broader telecommunications industry. In their fixation on the best "rate," the IXCs and others that seek to re-introduce burdensome ratemaking to the payphone market should not be allowed to turn back the clock to the stone age of regulation, just as the competitive market is beginning to flourish.

I. THOSE PARTIES OPPOSING THE "FAIR" COMPENSATION MANDATED BY THE FCC MISREAD THE RECENT DECISION BY THE U.S. COURT OF APPEALS

Contrary to the arguments by the IXCs and a number of other parties,[3] the Court of Appeals on two occasions has upheld much of the Commission's payphone compensation system and expressly recognized in Payphone II that "a market-based rate –

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[3] See, e.g., Sprint at 4; Excel Communications ("Excel") at 2-3; Competitive Telecommunications Association ("CompTel") at 2-4; LCI International Telecom Corp. ("LCI") at 2-3; Cable & Wireless at 2-3; Paging Network, Inc. ("PageNet") at 2-3.

as opposed to a cost-based rate – could satisfy the statutory fair compensation requirement." Payphone II at 6. The Court's concern was that the Commission had not adequately explained "why a market-based rate for coinless calls could be derived by subtracting *costs* from a *rate* charged for coin calls." Id. at 5. The Court faulted the Commission for failing to find expressly that costs and rates converge. The Court also found that the Commission failed to go through "the steps of connecting this premise [that costs and rates converge] with its reasoning in the Second Report." Id.

The Commission correctly sought comment on how to fill the missing links identified in the Court's opinion: (1) "whether the local coin rate reflects competitive market conditions and the extent to which costs and rate converge in the coin call market," and (2) whether, and how, it is possible to reason from the fact that costs and rate converge to the conclusion that the local coin rate, adjusted for differences in the costs directly attributable to local coin calls and dial-around calls, can serve as a "market-based mechanism for deriving fair compensation for coinless [dial-around] calls." Public Notice at 2.

The Commission should resist efforts to undo what has already been decided and upheld by the appellate court. At this juncture, the Commission's direction is clear: it must demonstrate through an appropriate analysis, such as that outlined below, that the local coin rate is a competitive rate that converges with costs, and that, with adjustments for differences in costs directly attributable to coin calls, the local coin rate provides a market-based rate for dial-around calls. When the Commission makes this showing on remand, there will be no need to rollback the existing market-based compensation system and reinvent the proverbial wheel, as is favored by some parties. Consistent with this approach, the lines of argument urged by the IXCs, the paging industry, and others should be rejected once again because they do not pass muster as a legal matter and are not good public policy options.

In view of the Court's opinion in Payphone II, a market-based approach using the local coin rate as a starting point can clearly be justified. First, the bulk of the payphone costs that must be recovered are joint and common costs. Second, the payphone market is competitive, with rates generally reflecting costs. Third, the rate for the most common type of call, the local coin call, is a reasonable approximation of the cost attributable to each dial-around call.[4] Fourth, by adjusting that rate for differences in marginal, or avoidable, costs attributable to each type of call, the Commission can arrive at a better approximation of the cost that would be attributable to each dial-around call in a freely functioning market. Finally, without specific evidence to estimate the differences in elasticity of demand in the local coin market and the elasticity of demand that would prevail in the dial-around market if it were free to function, it is permissible for the Commission to rely on an equal per-call allocation of joint and common costs to both types of services.

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[4] In its initial comments, APCC used the term "average costs" in making this argument. APCC believes the context makes clear that it meant the coin rate at each phone would approximate average cost at that phone. APCC includes this footnote to eliminate any possible ambiguity or the possibility of misconstruing the phrase.

II. THE MARKET IS FUNCTIONING COMPETITIVELY IN SETTING A COMPENSATION RATE

A. There is no basis to claims by IXCs and others that "locational monopolies" distort the payphone market.

1. The payphone market is not controlled by location providers that exercise monopoly power.

The IXCs and others attempt to jettison the Commission's use of the local coin market, as the starting point for a compensation rate for dial-around calls by arguing that the local coin market, which has been deregulated as of October 1997, is hopelessly distorted by the presence of "locational monopolies" in the payphone market. The commenters fully concede that there is intense competition between PSPs for locations. Because of this intense competition, PSPs bid up the price, i.e., the commissions, they pay to location providers. As to PSPs, these commissions are a real cost. And because the location provider extracts these high "rents" from the PSP, the PSP is forced to recover these expenses from end users. These commenters acknowledge that PSPs earn only a competitive return, and *as to the PSP*, rates equal cost.[5] But these commenters argue that the PSPs' rates to end users reflect the "monopoly rents" paid to the location provider.

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[5] Initially, this significant concession by those opposed to the Commission's existing market-based compensation approach is particularly apparent throughout the cost study submitted by MCI. This study breaks down the costs borne by PSPs and is designed to "low-ball" the per-call compensation rate. But, the study shows that entry into the market is relatively easy and indicates that "payphones are ubiquitous in society" as a result. MCI Cost Study at 1. The study thus validates much of the approach advocated by the PSPs throughout this proceeding.

Hence, in the view of the IXCs and others, there is a monopoly element present in the coin rate that prevents that rate from being a true market rate.

The IXCs and others, particularly MCI and the E-Group study it sponsors, raise the specter of "locational monopolies" for payphones and argue that *every* payphone has a locational monopoly over the provision of payphone service. In MCI's extreme view, the supply of payphones constitutes "thousands of 'small' franchise monopolies," where one apparently cannot find a payphone without also finding a monopoly and monopoly-level profits. MCI E-Group at 12.

Within this extreme view, the MCI E-Group attempts to provide, with little success, the economic underpinnings for the IXCs' arguments. To this end, MCI unearths a little-known "competition-for-the-field" theory from 1859 and applies it to the payphone market in a way that has PSPs bidding each other up in commission payments for locations. MCI E-Group at 2. Relying on this theory, MCI states that this theoretical bidding war represents the true competition in the payphone market – essentially "competition" to become one of "thousands of monopolies." AT&T, Sprint, and others join the battle and argue that the commissions paid to location providers as a result of competitive bidding ultimately leads to increased local coin rates to support the "monopoly rent" commission levels.[6] These parties seem to suggest that because the commissions paid to location

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[6] MCI E-Group at 7. MCI cites LEC press releases from November 1997 that point to commissions paid to location owners as a factor in the increased local coin rate. MCI E-Group at 6. These press releases deserve little credence, as they demonstrate only the efforts of the incumbent local exchange carriers to preclude undue public pressure after raising rates to market cost once subsidies were terminated pursuant to Section 276 of the Act. MCI also focuses on the excessive long-distance rates charged by Oncor Communications, but Oncor's long-distance rates on 0+ do not affect either the local coin

providers distort the proper workings of the payphone market, the market is unable to set an economically efficient local coin rate.

a. Location providers have no monopoly power to exercise.

Contrary to the IXCs' arguments, "locational monopolies" do not control the payphone market. To the extent that "locational monopolies" may exist in a few locations, there is little reason to believe that such monopolies could be sustained in the vast majority of cases outside of the MCI E-Group's academic ivory tower. In the words of Haring and Rohlfs, just because "Ma & Pa's...is the only market on the corner," it does not mean that there is any reason to believe "it has a corner on the [payphone] market." SPR Reply at 3. MCI's views are undoubtedly in jarring contrast to the real world experience of the millions of callers who use payphones today. Customers were never wedded to particular payphone locations, and with the advent of deregulation of the local coin rate, they can and do shop around for the best local coin rate.

MCI fails to consider, for example, that a significant number of payphone customers, perhaps a majority, are each repeat customers of the same handful of payphones that each uses. These payphone customers make calls from payphones in their neighborhoods, near their places of work, and along their daily commuting route without any complaint about the market-based rate charged at the payphone. To the extent that the payphone customers encounter or use a payphone that charges more than they believe

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rate charged at a given payphone or the per-call compensation for dial-around calls. Further, Oncor is an extreme case that is clearly not representative of the overwhelming majority of the presubscribed carriers at payphones.

is inappropriate, these customers will avoid that payphone in the future.[7] The would-be customers of an overpriced payphone will simply use another nearby payphone[8] or defer making the call until they reach their home or place of work. Haring and Rohlfs argue that "crossing the street to save a dime is eminently reasonable" for many individuals. SPR Reply at 4. In addition, product substitutes for payphone calls, such as cellular calls, abound.[9] SPR Reply at 5. In short, over a relatively short period of time, payphone

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[7] Haring and Rohlfs note that "[t]he expression 'fool me once, shame on you; fool me twice, shame on me' motivates many individuals' behavior." SPR Reply at 3. A few examples will help to make this everyday reality clear: (1) the messenger who makes stops throughout the neighborhood will be aware of any overpriced payphones, and will avoid them throughout the day whenever he has to call his dispatcher; (2) the fast-food cashier who has an overpriced payphone at his work premises will cross the parking lot to say hello to his friends at a competing establishment and use that establishment's fairly priced payphone; (3) the morning commuter who stops at the newsstand to pick up the daily newspaper and encounters a local coin rate that is more than she wants to pay, will defer her call until she reaches the bagel shop to pick up her daily coffee; and (4) the commuter who makes a stop at a convenience store on the way home, calls home to check on last-minute items to be picked up, and is offended by the rate for the call home, will have many choices of grocery stores on the way home where calls are more reasonably priced.

[8] As APCC stated in its most recent comments, the survey conducted by Consumers Union, Southwest Regional Office, May 1998 ("Consumers Union survey"), found that 30 percent of payphones in its sample were within visual range of payphones operated by other providers. APCC July 13, 1998 Comments at 4. In other cases, a simple inquiry will almost always yield the location of the nearest alternative payphone. Therefore, statements by some commenters, such as "it remains virtually impossible to track down a payphone operated by an alternative provider" are exaggerated, to say to the least. See Consumer Business Coalition for Fair Payphone 800 Fees ("CBC") at 8.

[9] MCI states that "almost no one makes a decision . . . about whether a given call should be on a cellular phone or a payphone." MCI E-Group at 9. This is incorrect. For those individuals that subscribe to cellular service, there clearly are many situations where such split-second economic analysis takes place. MCI's argument assumes that callers are price insensitive. Callers frequently seek the best deals for their calls as a matter of principle, even if there is only a nickel's difference in price. Haring and Rohlfs argue that "the demand for payphone service will become more elastic as wireless service becomes more economic and widespread." SPR Reply at 5. MCI also poses a hypothetical question on this issue that misses the mark: "how much cheaper would payphones have to be to

customers are becoming fully educated about any variations in the coin rates at the payphones they encounter on a routine basis and make their calling plans accordingly.

MCI's "thousands of monopolies" terminology in describing its view of the payphone marketplace is also internally inconsistent. By definition, a monopoly exerts *exclusive* control over a particular product or service.[10] "Thousands of monopolies," on the other hand, seems to suggest that thousands share control over a particular product or service. If "thousands" share control, there cannot be monopoly.[11] In fact, "thousands of monopolies" suggests a payphone market where most locations are virtually the same or, in other words, more or less fungible. Such is the case with the payphone marketplace today, where locations compete with each other for end users. SPR Reply at 6-7.

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induce cellular users . . . to switch to payphones for their calling?" Id. at 10. The better way to frame this issue is to query how high the local coin rate at payphones has to be to drive would-be customers to cellular service.

[10] The "exclusivity" that location providers often provide to PSPs is distinct from monopoly control. The location provider does not have a monopoly over payphone services to confer on the PSP. To paraphrase Haring and Rohlfs: in acquiring the space, one does not acquire monopoly power. SPR Reply at 7-8.

[11] MCI attempts to lump payphones together with monopoly services such as cable franchises and municipal water. MCI E-Group at 3. Both cable and water are clearly distinguishable from payphone services in that customers of the former two services never have an opportunity to purchase alternatives from another source; there is only one provider. MCI also lumps payphones with ambulance services. Because calls to ambulance services frequently involve life or death situations, callers rarely have the opportunity to put off making their emergency call or to shop around. Nor are callers to ambulance services generally repeat users, as is the case with many payphone callers. To the extent someone needs to make a "life or death" emergency call from a payphone, that call would be free, pursuant to FCC rules.

b. Commissions paid to location providers ensure the deployment of payphones.

Because "locational monopolies" cannot be sustained to any significant degree, commissions paid to location providers cannot be considered "monopoly rents." Instead, the commissions paid to location providers are needed to ensure the deployment of payphones in a world where every marketable space is up for grabs. PSPs compete with a wide range of products and services to secure the requisite location space. Bidding for locations by PSPs is bidding to entice a location provider both to free up space and to win that space from other competing uses. Haring and Rohlfs characterize a location provider's analysis in terms of "[a]re revenues from one use sufficient to affect the sacrifice of foregone revenues or sales from another? How does particular use affect demand for other products?" SPR Reply at 8.

Competition with other revenue-generating uses is the reality that provides another answer to MCI's "competition-for the field" approach. Without commissions, there would not be an adequate supply of payphones from which customers can place calls. MCI and some other commenters demonstrate that they have overlooked one of the most fundamental aspects of the payphone marketplace. In paying commissions to location providers, PSPs are not only competing with one another to secure prime locations, they are trying to convince the location provider that any payphone can pull its economic weight in a particular location as opposed to alternative uses for the space. As Haring and Rohlfs point out, if payphones do not earn a particular level of revenue for the location provider, other revenue-generating services, whether it is a cappuccino cart at the airport or a snack foods rack at the convenience store, will take up the space. SPR at 11.

The need for payphones to compete with other revenue-generating services invalidates MCI's "competition-for the field" approach. PSPs compete with a wide range of products and services to secure the requisite location space. To the extent that there is any bidding by PSPs, it is bidding to win that space from other competing uses and to entice the location provider to free up space. Without commissions, there would not be an adequate supply of payphones from which customers can place calls.

c. Payphones are one element in a location provider's total product mix.

MCI attempts to distort commission costs by quoting a payphone ownership guide to the effect that "I have never found a site owner who wasn't motivated to some extent by the possibility of earning higher commissions." MCI E-Group at 4. But the words of the quote itself provide the rejoinder to MCI's position. The key to a location provider's motivation and the quote itself, is in the words "to some extent." It is not hard to imagine that location providers are motivated in part by the level of revenue from a payphone site. That is the nature of our business economy. Nevertheless, the level of revenue from a payphone remains only one motivation for the location provider. Another factor that is just as important, perhaps more so, is need to set the local coin rate at a level that will not drive off customers from the location's other businesses and, instead, encourage would-be customers to enter the location to transact any one of a number of businesses conducted there.

From a vendor's point of view, payphones are just one element in the totality of the vendor's product mix. To overcharge on any element of this product mix, including payphone calls, puts the sale of the entire mix at risk. Haring and Rohlfs recognize that a reputation for high prices without commensurate quality will discourage consumption and risk loss of repeat business. SPR Reply at 5. For example, the Alpha convenience store would not risk offending its repeat customers who buy magazines, cigarettes, and lottery tickets on a daily basis by overcharging at its payphones, particularly when the Omega convenience store with the same mix of products is just a stop away with a payphone that charges less. See also examples cited in note 7, above.

For all their talk of "locational monopolies," the inability of opponents to initially point to virtually any instance of abuse in rates charged in even paradigmatic "locational monopolies" highlights the point that a location's total product mix provides a more than adequate market constraint on any possible overcharging. APCC pointed out in its initial comments that, even in mass-transit facilities, such as airports and train stations, where access to alternative sites might be more constricted, the owners of the facilities tend to be highly sensitive to complaints about unreasonable charges from consumers whose price expectations are formed by experiences at more competitive locations. As a result, even payphones in airports and train stations are generally priced at or near the prevailing market rate (currently 35¢ per local call). See APCC July 13, 1998 Comments at 6-7.

d. There is no shortage of payphone locations.

Contrary to MCI's assumption that the number of locations for payphones is fixed, the supply of physical locations at which payphones can be placed is elastic – the supply depends only on what the market dictates. See SPR Reply at 6. As APCC made clear in its most recent comments, the payphone market is characterized by low economic